IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4607 OF 1998

Dairy Development Commissioner. ... Petitioner.

V/s.

1. H.G. Tiwari.

2. Shri V.P.Patil,
Presiding Officer,
Labour Court, Mumbai. ... Respondents.

WITH

WRIT PETITION NO. 1350 OF 1999

Hridayanarayan Girija Tiwari. ... Petitioner.

V/s.

1. Dairy Development Commissioner.

2. General Manager,
Greater Bombay Milk Scheme,

3. V.P.Patil,
1st Labour Court, Bombay. ... Respondents.

R.M.Patne, A.G.P. for the petitioner in W.P.No.4607/98 and respondent Nos.1 and 2 in W.P.No.1350/99

N.M.Ganguli for respondent No.1 in W.P.No.4607/98 and petitioner in W.P.No.1350/99.

CORAM : V.C.DAGA, J.

DATED : 5th May, 2006.

JUDGMENT :

. These writ petitions are directed against the order dated 25th March, 1998 passed by the First Labour Court in Reference (IDA) No.750 of 1990 directing Dairy Development Commissioner ("employer" for short) directing reinstatement of Shri H.G.Tiwari ("workman" for short) with 80% back wages with all consequential benefits. However, as on date the workman has already crossed the age of superannuation.

2. The workman and employer both of them have filed cross petitions to challenge the order of the first Labour Court to the extent it is adverse to their interest. The facts and circumstances being common, both petitions were heard together and are being disposed of by this common judgment.

FACTS :
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3. The workman while in service of the employer was active member of the union.

4. On 20th May, 1986, employer issued charge-sheet to the workman levying charges of

instigating strike and compelling other workers to participate therein.

5. An enquiry, pursuant to the chargesheet was held against the workman. The Enquiry Officer held him guilty of the misconduct alleged against him. The punishment of compulsory retirement was imposed on him vide order dated 18th November, 1987.

6. Being aggrieved by the punishment, workman raised an industrial dispute demanding reinstatement with full back wages.

7. The State Government, initially, refused to make reference under section 10 of the Industrial Disputes Act, 1947 ("I.D.Act" for short) for adjudication. Consequently, workman was required to file Writ Petition No.3645/1988; wherein this Court was pleased to direct the State Government to refer the dispute for adjudication. The State Government, accordingly, referred the dispute for adjudication to the Labour Court, Mumbai.

8. The workman filed his Statement of Claim alleging victimisation, breach of principles of natural justice in conduct of enquiry and also

alleged that the findings of the enquiry officer were perverse.

9. The employer filed its reply/ written statement denying all the allegations made against it contending that a proper enquiry was held before punishing the workman.

10. The Labour Court was pleased to frame preliminary issue: whether the enquiry held against the workman was fair and proper?

11. The Labour Court was pleased to answer the above preliminary issue in favour of the workman vide its interim award dated 8th April, 1996 and had directed the employer to reinstate the workman with liberty to hold fresh enquiries as per the Maharashtra Civil Services Rules, 1979 with further liberty reserved in favour of the employer to suspend the workman pending enquiry.

12. Being aggrieved by the above award, the employer had filed Writ Petition No.1839/1997 in this Court against the aforesaid award of the Labour Court; wherein this Court, vide its order dated 11th July, 1997 was pleased to set aside the award. The Labour Court was directed to hold enquiry under section 11-A of the I.D.Act.

13. Pursuant to the aforesaid order, a fresh enquiry was conducted by the Labour Court. The Labour Court reached to the conclusion that the allegations levelled in the charge-sheet were partly proved. Consequently, Labour Court was pleased to direct reinstatement of the workman with 80% back wages.

14. Both parties to the dispute, not being satisfied with the above award, invoked writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India by two separate petitions to challenge the legality and validity of the award impugned in the petitions.

Submissions :
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15. Mr.Ganguli, learned counsel appearing for the workman submits that the charge-sheet issued was vague. It did not contain material facts and particulars as to the nature of the misconduct alleged. According to him, the allegations made in the charge-sheet did not constitute any misconduct on the part of the workman. In his submission, in absence of any specific misconduct under the Maharashtra Civil Services Rules, it was

not open for the employer to proceed with the departmental enquiry and punish the subject workman.

16. Mr.Ganguli further submits that the Labour Court in the earlier round of litigation was right in holding that departmental enquiry conducted against the workman was not fair, proper and legal. He further submits that even in the enquiry before the Labour Court, the misconducts alleged in the charge-sheet were not proved against the workman. They have not been established by leading cogent evidence. According to him, mere presence of the workman at the place of occurrence or incident is not sufficient to hold him guilty of the alleged misconducts. He submits that the Labour Court has rightly held that the punishment of compulsory retirement of the workman was not legal, proper and justified.

17. Mr.Ganguli submits that the Labour Court was not justified in denying back wages to the extent of 20% to the workman. According to him, the reasons given for the same were extraneous and perverse. In his submission, the Labour Court has failed to appreciate that the back wages could not be denied by way of punishment. In his submission, employer has illegally deprived the

workman of his right to earn wages by illegally retiring him compulsorily.

18. Mr.Ganguli submits that the workman cannot be told that though he is succeeding in getting the punishment set aside, that too after the protracted litigation, still he would not be paid part of the back wages. He, thus, submits that payment of back wages is an independent issue though incidental to the relief of reinstatement. In his submission, workman could not have been denied back-wages to the extent of 20%. He, thus, submits that the impugned award is erroneous to this extent.

19. Mr.Ganguli urged that the employer, in the writ petition filed by it, has alleged that other employees, who were along with the workman were punished. The employer has placed on record the orders of punishment passed against the said employees. Mr.Ganguli submits that the number of employees, who were alleged to be with the petitioner, were 40 to 50 while punishment was given to 7 or 8 employees only. That it is not known whether any enquiry was held against them before or subsequent to passing the impugned order of punishment. He, thus, tried to make out a case of discrimination.

20. Mr.Ganguli submits that the alleged loss of Rs.3,71,370/- alleged by the employer has not been established by leading cogent evidence before any forum and that the said allegations were made for the first time in the petition filed by the employer.

21. According to Mr.Ganguli, the workman was singled out by the employer since he was union activist. According to him, the workman was unfairly treated by the employer and, thus, the employer itself has engaged in the act of unfair labour practice by practising victimisation. In his submission, the Labour Court ought to have awarded full wages to the workman during the period of his forced unemployment at the instance of the employer who deprived him of his right to earn wages. He, thus, urged that the workman was entitled to reinstatement with continuity in service and full back wages.

22. Per contra, the learned A.G.P., appearing on behalf of the employer submits that the workman was compulsorily retired as the charges levelled against him were proved. According to him, because of the subject workman, six times distribution of milk was required to be stopped

during the period October, 1985 to May, 1986. That is how, in his submission, the subject workman has caused losses to the employer to the tune of Rs.3,08,970/-. This has also caused harassment to the consumers viz.; milk card holders. He has urged that the Labour Court has held that four witnesses have deposed against the workman. It shows that the workman was responsible for the consequent losses suffered by the employer.

23. The learned A.G.P. further submitted that action has been taken against 43 workmen; who had taken part in the stoppage of distribution of milk on instigation of the subject workman during the period 4th June, 1986 to 7th June, 1986 resulting into heavy losses suffered by the employer worth Rs.89,934.11. In his submission, the Labour Court could not have awarded 80% back wages to the workman. At any rate, in his submission, the workman would not be entitled for full back wages and compensation as prayed by the workman.

24. The learned A.G.P. submits that pursuant to the order of this Court dated 1st September, 1998 the employer has deposited amount of back wages in this Court, which may be refunded to them by allowing the petition filed by the employer.

Consideration :

25. Having heard rival parties at length and having perused the award dated 25th March, 1998 impugned in these petitions, it is no doubt true that the Labour Court has not dealt with the evidence in detail and the award in question is a sketchy award. However, it would not be in the interest of justice to remit this matter back to the Court below; considering the pendency of this litigation in the courts right from the year 1987. Thus, parties to the petition were directed to make their detailed submissions before this Court.

26. The learned counsel appearing for the rival parties took me through the entire evidence available on record in order to prove their rival contentions.

27. Having gone through the award, a question that needs to be considered is: whether or not the findings recorded by the Labour Court and the view taken in the impugned award is reasonable and possible view.

28. In order to answer the above question I first turn to the findings recorded by the Labour Court.

29. The Labour Court has recorded categorical findings based on the depositions of the witnesses and held that involvement of the subject workman in the misconducts alleged cannot be ruled out. His participation in committing the act of misconduct leading to the four instances; which took place on various dates, has been established.

30. The issue narrowed down in the petition of the workman remains for consideration is: whether or not denial of 20% back wages to the workman by the Labour Court was justified. In other words, whether or not 20% back wages were rightly denied to the workman. Whereas in the petition filed by the employer, the question is: whether or not the entire award impugned in this petition is legal and valid.

31. In order to answer above questions it is necessary to run through the evidence on record only to find out sustainability of the impugned award in the light of material available on record.

32. Mr.Bharat Gaikwad, Assistant Milk Procurement and Distribution Officer, during the course of his evidence has deposed that the workman Mr.Tiwari had threatened Mr.Bage, Manager,

Transport Division, Kurla and warned the drivers to stop work. That he called upon the drivers not to go for distribution of milk. That Mr.Tiwari was also involved in shouting slogans and had instigated the other workers to stop the work of distribution of milk. That due to obstruction in the distribution of milk, the milk could not be distributed to the consumers; with the result, lot of complaints were received and, ultimately, the Government was put to heavy loss. That more than 12,000 litres of milk was return back in excess of average return of the day. This caused loss to the Government and inconvenience to the customers. That on 3rd May, 1986, Mr.Tiwari, subject workman had refused to accept the receipt of bottle checker and did not returned the empty tray from his vehicle and also induced the other workers for stoppage of work; that is how he instigated and declared illegal strike.

33. If one turns to the evidence of Mr.S.B.Samant, Milk Procurement and Distribution Officer, Kurla, he has deposed that Mr.Tiwari, subject workman was responsible for disrupting the work of distribution of milk by squatting at Security Door, Mother Dairy at Kurla and prevented the drivers from driving out their vehicles carrying milk. That Mr.Tiwari, subject workman

was mainly responsible for preventing the other drivers from driving out their vehicles. That an attempt was made to convince Mr.Tiwari; but failed to convince him. That the management was required to contact Tilak Nagar Police Station and control room to seek police help. That strike was caused on that day because of Tiwari's instigation since he had blocked the main entrance gate. It is no doubt true that the above witnesses were cross-examined by the representative of the subject workman but nothing much could be elicited from them so as to dislodge the charges levelled.

34. The above evidence was appreciated by the Labour Court along with the evidence of the witnesses examined by Mr.Tiwari. It is no doubt true that some part of the evidence led by the workman help the defence of the workman-Mr.Tiwari. But this Court not being a court of appeal cannot reappreciate the evidence on record. This Court has only to examine whether view taken is a possible and reasonable view in the facts and circumstances of the case. Thus, taking overall view of the evidence available on record, one has to reach to the conclusion of presence of Mr.Tiwari at the place of incident and his involvement in the entire episode leading to instigation to stop the work of distribution of

milk cannot be ruled out. Gravity of his instigation may have been exaggerated by the witnesses examined by the management, but at no stretch of imagination involvement of Mr.Tiwari, subject workman can completely be excluded. Consequently, the Labour Court has taken a lenient view while directing reinstatement of the workman with 80% back wages. What is denied is only 20% back wages considering the extent of involvement of the subject workman in the entire episode. In the wake of these findings I do not see any perversity in the approach of the Labour Court. The view taken by the Labour Court is a reasonable and possible view and the same can very well be justified on the evidence available on record.

35. At this juncture, it will be relevant to refer to some of the cases of the Apex Court with respect to appreciation of evidence in the enquiry. The law with respect to appreciation and sufficiency of evidence has already been settled by various judgments of the Apex Court. The readily available judgment is that of **State of Madras v. G.Sundaram**, AIR 1965 SC 1103; wherein the Apex Court held that High Court under Article 226 of the Constitution of India cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted

departmental enquiry except when it is shown that the impugned findings are not supported by any evidence. The High Court cannot consider adequacy of that evidence to sustain the charge. The very same principle would be applicable where the Labour Court acts as a Tribunal to find out whether or not the charges levelled against the delinquent employee are proved.

36. In the another case of **Railway Board v. N.Singh**, AIR 1969 SC 966, the Apex Court was of the view that conclusion of departmental proceedings supported by evidence and one which would have been reached by reasonable man could not be interfered with by the High Court on writ application.

37. In **State of Orissa v. Murlidhar**, AIR 1963 SC 779, the Apex Court laid down that the High Court cannot sit on appeal on the findings of the departmental proceedings or to reappreciate the evidence.

38. The rule that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court does not apply to departmental proceeding, and even if that rule is not applied, High Court under

Article 226 is not competent to declare the order of the authority holding a departmental enquiry invalid. The Labour Court when investigates the charges levelled against the delinquent employee acts in the same capacity in which the enquiry officer acts. The High Court is not constituted in a proceeding under Article 226 as a Court of Appeal over the decision of the authorities holding a departmental enquiry and it is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether rules of natural justice are violated or not. Where there are some evidence, which the authority entrusted with the duty to hold enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent employee is guilty of the charge, it is not the function of the High Court under Article 226 to review the evidence and arrive at an independent finding on the evidence. But where the departmental authorities have held proceedings in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by

allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it, is so wholly arbitrary or capricious that no reasonable person could ever have arrived at that conclusion or on similar ground, the High Court has power to interfere. (see **State of A.P. v. Shri Rama Rao**, AIR 1963 SC 1723).

39. In the case of **Sangram Singh v. Election Tribunal**, AIR 1955 SC 425, the Apex Court held that the High Courts do not, and should not, act as Courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. The High Courts cannot allow themselves to be turned into courts of appeal or revision to set right mere error of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Thus, the

High Court is not expected to interfere with the well considered decision.

40. In the case of **Ved Prakash Gupta v. Delton Cable India Ltd.**, AIR 1984 SC 914, the Apex Court ruled that when punishment awarded is shockingly disproportionate regard being had to the charge framed particularly when the circumstances will infer that no responsible employer will victimise the employee with extreme punishment, the unfair labour practice can well be inferred from the conduct of the management. In the case at hand, considering the findings recorded by the Labour Court, it is difficult to reach to the conclusion that denial of 20% back wages to the subject workman by way of punishment was disproportionate to the charges levelled against him.

41. In the aforesaid view of the matter, considering the material available on record and the law laid down by the Apex Court, I have absolutely no hesitation to affirm the order of the Labour Court. In the result, both the petitions are liable to be dismissed.

. Accordingly both the petitions are dismissed. Rule in both the petitions stand discharged with no order as to costs.